

### **Remarks/Arguments**

Applicants have received and carefully reviewed the Office Action of the Examiner mailed December 10, 2007. Currently, claims 1-81 remain pending of which claims 9-11, 20, 25-40, and 50-52 were previously withdrawn from consideration. Claims 1-8, 12-19, 21-24, 41-49, and 53-64 have been rejected. In this amendment, claim 1 has been amended. Favorable consideration of the following remarks is respectfully requested.

#### ***Claim Rejections – 35 USC § 112***

On page 2 of the Office Action, claims 1-8, 12-19, and 21-24 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claims the subject matter which applicant regards as the invention. In particular, the Examiner objected to the phrase “deploying the second deployable structure within the vessel” of claim 1 as being unclear since claim 1 discloses that the second deployable structure is disposed at a location proximal or distal to the treatment site. While Applicant believes that original claim 1 is clear and without conceding the correctness of the rejection, Applicant has amended claim 1 to recite “deploying the second deployable structure within the vessel at the location proximal or distal the treatment site” to further prosecution. Therefore, Applicant respectfully requests withdrawal of the rejection.

#### ***Claim Rejections – 35 USC § 102***

On page 3 of the Office Action, claims 1 and 41 were rejected under 35 U.S.C. 102(e) as being anticipated by Kokish et al. (U.S. Patent No. 6,485,500). After careful review, Applicant must respectfully traverse this rejection.

Turning to claim 1, which recites:

1. (currently amended) A method of treating a treatment site in a blood vessel, the method comprising:

providing an apparatus including, a first deployable structure and a second deployable structure;

inserting the apparatus into the vessel adjacent the treatment site such that the first deployable structure is disposed adjacent the treatment site, and the second deployable structure is disposed at a location proximal or distal to the treatment site;

introducing a treatment material into the vessel proximate the treatment site;

deploying the second deployable structure within the vessel at the location proximal or distal the treatment site; and

deploying the first deployable structure adjacent the treatment site to create movement of the treatment material adjacent the treatment site.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). (MPEP § 2131). Nowhere does Kokish et al. appear to teach or suggest “deploying the first deployable structure adjacent the treatment site to create movement of the treatment material adjacent the treatment site”, as recited in claim 1.

In the Office Action, the Examiner states “Figure 6 shows … deploying the first deployable structure adjacent the treatment site to create movement of the treatment material adjacent the treatment site”. However, nowhere does the Examiner cite any specific portion of Figure 6 or the corresponding description of Figure 6 as teaching or suggesting this limitation. In fact, Applicant must respectfully assert that Figure 6 does not teach or suggest this limitation.

Kokish et al. is directed to an emboli protection system that provides one or more inflatable blocking balloons for isolation of a section of a blood vessel to prevent migration of emboli from the section during an interventional procedure, and fluid infusion and evacuation ports for flushing emboli from the isolated section. While Kokish et al. does discuss the introduction of fluid to flush the emboli from the isolated area, there appears to be no teaching or suggestion of deploying a deployable structure adjacent the treatment site to create movement of the treatment material adjacent the treatment site as in claim 1. In Kokish et al., the movement of the introduced fluid appears to be due to the pressure with which the fluid is introduced, and/or the pressure differential that the fluid creates. (see, for example, Col. 4, lines 13-23). In any event, there appears to be no teaching or suggesting of deploying a deployable structure to create movement of a treatment material adjacent the treatment site.

In fact, in Kokish et al., it appears as though the balloons or other deployable structures are deployed prior to the introduction of fluids. In other words, the introduction of fluids in Kokish et al. does not occur until after such deployable structures are deployed. (For example, see Col. 4, lines 8-23; Col. 11, lines 27-36; and Col. 16, line 55 through Col. 17, line 17, where Kokish et al. describes the breaking-up of the plaque material in the vessel, followed by the introduction of a fluid to flush the emboli created.) As such, the deployment of the structures in

Kokish et al. cannot create movement of the introduced fluid because the fluid has not yet been introduced when the structures are deployed.

As such, Kokish et al. does not teach or suggest each and every element of claim 1. Therefore, for at least these reasons, claim 1 is believed to be not anticipated by Kokish et al. and Applicant respectfully requests withdrawal of this rejection.

Turning to claim 41, which recites:

41. (previously presented) An apparatus for treating a treatment site in a blood vessel, the apparatus comprising:

an elongated tubular member including a distal portion;  
a structure for introducing treatment material to the treatment site;  
an first deployable structure connected to the distal portion of the tubular member, the first deployable structure adapted to be deployed and engage the blood vessel at a position proximal or distal of the treatment site; and  
a second deployable structure connected to the distal portion of the tubular member, the second deployable structure adapted to be deployed adjacent the treatment site to create movement of the treatment material adjacent the treatment site.

As discussed previously, nowhere does Kokish et al. appear to teach or suggest “the second deployable structure adapted to be deployed adjacent the treatment site to create movement of the treatment material adjacent the treatment site”. Therefore, for at least these reasons, claim 41 is believed to be not anticipated by Kokish et al. and Applicant respectfully requests withdrawal of this rejection.

#### ***Claim Rejections – 35 USC § 103***

On page 4 of the Office Action, claims 2-8, 12-19, 21-24, 42-49 and 53-64 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kokish et al. in view of Chien et al. (U.S. Patent No. 6,623,452), or Halevy (U.S. Patent No. 6,663,589), O’Connor (U.S. Patent No. 6,398,792), Jang (U.S. Patent No. 6,051,014), or Bradshaw (U.S. Patent No. 6,450,988), and further in view of Keith et al. (U.S. Patent No. 5,702,439) or Kraus et al. (U.S. Patent No. 5,209,728). After careful review, Applicant must respectfully traverse this rejection.

With regards to claim 2, nowhere do the cited references appear to teach or suggest “further including repeatedly deploying and un-deploying the first deployable structure adjacent the treatment site to create movement of the treatment material adjacent the treatment site”. Furthermore, nowhere does the Examiner cite any portion of the cited references as teaching or

suggesting this element. Applicant respectfully requests that if the Examiner is to maintain this rejection, the Examiner point out with particularity where the cited references teach or suggest this element.

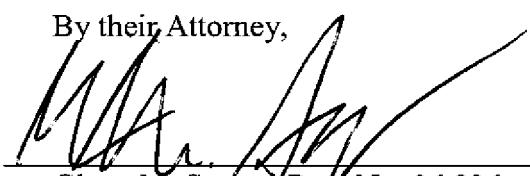
As discussed above, Kokish et al. appears to fail to teach or suggest deploying a deployable structure adjacent the treatment site to create movement of the treatment material adjacent the treatment site, as in claim 1, or a second deployable structure adapted to be deployed adjacent the treatment site to create movement of the treatment material adjacent the treatment site, as in claim 41. Nowhere do the cited references appear to cure the deficiencies of Kokish et al. In particular, none of these references appear to teach or suggest deploying a deployable structure adjacent the treatment site to create movement of the treatment material adjacent the treatment site or a second deployable structure adapted to be deployed adjacent the treatment site to create movement of the treatment material adjacent the treatment site. Therefore, for at least these reasons, claims 2-8, 12-19, and 21-24, which depend from claim 1, and claims 42-49 and 53-64, which depend from claim 41, are believed to be patentable over Kokish et al. in view of Chien et al., or Halevy, O'Connor, Jang, or Bradshaw, and further in view of Keith et al. or Kraus et al. and Applicant respectfully requests withdrawal of the rejection. Applicant respectfully request that if the Examiner is to maintain this rejection, that the Examiner point out with particularity where each of the references teach or suggest the claim limitations.

In view of the foregoing, all pending claims are believed to be in a condition for allowance. Reexamination and reconsideration are respectfully requested. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

HAROLD CARRISON et al.

By their Attorney,



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Glenn M. Seager, Reg. No. 36,926  
CROMPTON, SEAGER & TUFTE, LLC  
1221 Nicollet Avenue, Suite 800  
Minneapolis, Minnesota 55403-2420  
Telephone: (612) 677-9050  
Facsimile: (612) 359-9349